

808 KAR 10:460. Request for Approval of Change in Control.

RELATES TO: KRS 292.330(13)(a)

STATUTORY AUTHORITY: KRS 292.330(12)(f), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the executive director to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(12)(f) authorizes the commissioner to promulgate administrative regulations for the conduct of business by broker-dealers and investment advisers. KRS 292.330(13)(a) authorizes the commissioner to deny, suspend, or revoke the registration of a broker-dealer or investment adviser if the registrant or any person, directly or indirectly controlling the registrant has engaged in certain activities. This administrative regulation requires registrants to submit a request for a change in the control of the registrant so that the commissioner may review the background of the acquiring person.

Section 1. Definitions. (1) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(2) "Reportable event" means an event that is required to be reported in Items 11A-11H of the Form BD or Item 11 of the Form ADV.

Section 2. Presumption of Control. A person shall be presumed to control an entity if the person:

(1) Is an officer, director, general partner, or managing member of the entity or is a person occupying a similar status or performing similar functions;

(2) Has the right, directly or indirectly, to vote twenty-five (25) percent or more of the voting securities of the entity; or

(3) Is entitled to receive twenty-five (25) percent or more of its profits.

Section 3. Requirement for Approval of Change in Control. A registered broker-dealer or investment adviser shall submit a request for approval of a change in the control of the broker-dealer or investment adviser if control is to be acquired by any person who:

(1) Is not currently registered in Kentucky as a broker-dealer or investment adviser; or

(2) Has had a reportable event in the previous ten (10) years.

Section 4. Request for Approval of Change in Control. (1) A registered broker-dealer or investment adviser required to submit a request for approval of a change in control shall file a letter of request along with an amended Form BD or Form ADV indicating the proposed change in the control of the broker-dealer or investment adviser.

(2) A request for approval shall be submitted at least thirty (30) days prior to the proposed change in control.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form BD", May, 2002; and.

(b) "Form ADV", April 7, 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. (35 Ky.R. 1374; Am. 1778; eff. 2-6-09; TAm eff. 12-3-2019; Crt eff. 2-27-2020.)